

SC84131

---

IN THE SUPREME COURT OF MISSOURI

---

DENNIS EDWARD WOODSON

Appellant

v.

BELINDA ULRICH-WOODSON

Respondent/Cross-Appellant

---

APPEAL FROM THE CIRCUIT COURT  
PLATTE COUNTY, MISSOURI  
DIVISION FIVE  
HONORABLE GARY D. WITT, JUDGE

CIRCUIT CASE NO. 00CV83932

---

RESPONDENT'S BRIEF

---

MICHAEL J. SVETLIC, #25279  
SVETLIC & WEMHOFF, LC  
5716 North Broadway  
Kansas City, Missouri 64118  
816/452-4533  
816/452-8371 FAX  
ATTORNEY FOR RESPONDENT/  
CROSS APPELLANT

## TABLE OF CONTENTS

JURISDICTIONAL STATEMENT.....	3
STATEMENT OF FACTS.....	3
POINTS RELIED ON AND AUTHORITIES.....	4
ARGUMENTS AND AUTHORITIES.....	5

**THE TRIAL COURT DID NOT ERR IN TREATING WIFE’S MISSOURI STATE TEACHER RETIREMENT FUND AS HER SEPARATE PROPERTY BECAUSE §169.572 R.S.MO. 2000 PROTECTS WIFE’S TEACHERS RETIREMENT FUND FROM DIVISION IN A DISSOLUTION PROCEEDING IN THAT, EVEN THOUGH WIFE ALSO CONTRIBUTED TO THE SOCIAL SECURITY (FICA) FUND IN ADDITION TO HER TEACHERS PENSION, THE STATUTE IS PRESUMED VALID AND HUSBAND DOES NOT POSSESS A FUNDAMENTAL PROPERTY RIGHT IN WIFE’S SEPARATE, NON-MARITAL PROPERTY NOR IS HE A MEMBER OF A SUSPECT CLASS FOR THE PURPOSES OF DUE PROCESS OR EQUAL PROTECTION ANALYSIS UNDER THE U.S. AND MISSOURI CONSTITUTIONS.**

CONCLUSION.....	11
CERTIFICATE OF SERVICE AND COMPLIANCE PURSUANT TO RULE 84.06....	12

## **TABLE OF AUTHORITIES**

### **Constitutional Provisions**

U.S. Constitution, Amendment Fourteen.....	5
--	---

### **Cases**

<u>Batek v. Curators of University of Missouri</u> , 920 S.W.2d 895, 899 (Mo.banc 1996)...	8,10
<u>Cas. Reciprocal v. Mo. Emp. Mut. Ins.</u> , 956 S.W.2d 249 (Mo.banc 1997).....	7
<u>Gismegian v. Gismegian</u> , 849 S.W.2d 201 (Mo.App.1993).....	6
<u>In Re Marriage of Kohring</u> , 999 S.W.2d 228 (Mo.banc 1999).....	6,7
<u>Mahoney v. Doerhoff Surgical Servs., Inc.</u> , 807 S.W.2d 503,512 (Mo.banc 1991).....	7
<u>Silcox v. Silcox</u> , 6 S.W. 3rd, 899 (Mo. Banc 1999).....	8
<u>Simpson v. Kilcher</u> , 749 S.W.2d 386 (Mo.banc 1988).....	10
<u>State ex rel. Toedebusch v. Public Service</u> , 520 S.W.2d 38, (note 34, Mo.banc 1975).....	8
<u>State v. Taylor</u> , 726 S.W.2d 130(Mo.banc 1987).....	10
<u>Stone v. City of Jefferson</u> , 293 S.W. 730 (Mo.banc 1927).....	6
<u>Waggoner v. Waggoner</u> , 846 S.W. 2d 704 (Sup.Ct. Kentucky 1992).....	8

### **Statutes**

§169.572 R.S.Mo. ....	5,6,7,9,11
KRS 161.700(2).....	8

## **JURISDICTIONAL STATEMENT**

Respondent Belinda Woodson (Wife) accepts and adopts in its entirety the Jurisdictional Statement listed in Dennis Woodson's (Husband) Appellate Brief.

## **STATEMENT OF FACTS**

Wife accepts the Statement of Facts set forth in Husband's Brief which correct misstatements listed in Wife's appellate brief regarding the payment of debts which Wife was ordered to pay in the trial court's distribution of marital debt division. (Cross/Appellant Dennis Woodson's Brief, 14). Wife accepts and adopts in their entirety all statements of fact relating to the trial court's treatment of Wife's teacher's retirement fund, which comprise the subject matter of this response. (Cr.App.Br. 11-14).

Wife offers the following clarifications regarding Husband's conduct toward Wife and their children during the marriage rather than submitting an entirely new and separate statement. Husband's behavior toward Wife that she claims contributed to the breakdown of their second marriage began to occur around ten years prior to her filing for divorce. (Tr. 24). Wife described this behavior as verbally abusive language and threats to herself and their children. (Tr. 25). The court made no finding to support Husband's claim that he was "the marriage partner who attempted to save money over the years and to use it for the children, to improve the lawn and snow removal business, and for unexpected expenses (Cr.App.Br. 10); nor did it find that Wife was "financially irresponsible and she would have spent every cent of [\$15,000 in cash which Husband kept hidden and secret from Wife]." (Cr.App.Br. 10).

**POINTS AND AUTHORITIES RELIED ON**

THE TRIAL COURT DID NOT ERR IN TREATING WIFE'S MISSOURI STATE TEACHERL RETIREMENT FUND AS HER SEPARATE PROPERTY BECAUSE §169.572 R.S.MO. 2000 PROTECTS WIFE'S TEACHERS RETIREMENT FUND FROM DIVISION IN A DISSOLUTION PROCEEDING IN THAT, EVEN THOUGH WIFE ALSO CONTRIBUTED TO THE SOCIAL SECURITY (FICA) FUND IN ADDITION TO HER TEACHERS PENSION, THE STATUTE IS PRESUMED VALID AND HUSBAND DOES NOT POSSESS A FUNDAMENTAL PROPERTY RIGHT IN WIFE'S SEPARATE, NON-MARITAL PROPERTY NOR IS HE A MEMBER OF A SUSPECT CLASS FOR THE PURPOSES OF DUE PROCESS OR EQUAL PROTECTION ANALYSIS UNDER THE U.S. AND MISSOURI CONSTITUTIONS.

Silcox v. Silcox, 6 S.W.3d 899 (Mo. banc 1999)

In Re Marriage of Kohring, 999 S.W.2d 228 (Mo.banc 1999)

Waggoner v. Waggoner, 846 S.W. 2d 704 (1992)

Batek v. Curators of University of Missouri, 920 S.W.2d 895(Mo.banc 1996)

§169.572 R.S.Mo.

## **ARGUMENT AND AUTHORITY**

**THE TRIAL COURT DID NOT ERR IN TREATING WIFE’S MISSOURI STATE TEACHER RETIREMENT FUND AS HER SEPARATE PROPERTY BECAUSE §169.572 R.S.MO. 2000 PROTECTS WIFE’S TEACHERS RETIREMENT FUND FROM DIVISION IN A DISSOLUTION PROCEEDING IN THAT, EVEN THOUGH WIFE ALSO CONTRIBUTED TO THE SOCIAL SECURITY (FICA) FUND IN ADDITION TO HER TEACHERS PENSION, THE STATUTE IS PRESUMED VALID AND HUSBAND DOES NOT POSSESS A FUNDAMENTAL PROPERTY RIGHT IN WIFE’S SEPARATE, NON-MARITAL PROPERTY NOR IS HE A MEMBER OF A SUSPECT CLASS FOR THE PURPOSES OF DUE PROCESS OR EQUAL PROTECTION ANALYSIS UNDER THE U.S. AND MISSOURI CONSTITUTIONS.**

## **STANDARD OF REVIEW**

Appellant Dennis Woodson (Husband) challenges the constitutionality of §169.572 R.S.Mo. 2000 on the grounds that its application to the facts of this case deprives him of a fundamental property right without due process of law and denies him equal protection of the law. Husband contends that the standard of review in this case is strict scrutiny and the statute must accordingly use the “least restrictive means consistent with its goal of furthering a compelling state interest.” (Cr.App.Br. 18).

Husband’s is correct in asserting that the Due Process Clause of the Fourteenth

Amendment to the U.S. Constitution contains a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests. (Cr.App.Br. 18). However, Husband's contention that a "fundamental right" is at issue concerning his interest in Belinda Woodson's (Wife) separate retirement fund in this case is based solely upon Stone v. City of Jefferson, 293 S.W. 730 (Mo.banc 1927), stating "the right to acquire, hold, enjoy, and dispose of property, real or personal," is a fundamental right guaranteed by the U.S. Constitution. The facts in Stone relate to real property abutting a street, which was *owned* by an individual protesting the expense of improvement to the street as a taking without due process. Id. at 731.

The facts of this case concern a state statute, which precludes teacher's retirement pensions from consideration as marital property. §169.572 R.S.Mo. The "property" in question in this case is considered Wife's separate property and not subject to equitable division upon dissolution. Gismegian v. Gismegian, 849 S.W.2d 201 (Mo.App.1993). Husband's claimed interest in a share of Wife's teacher's retirement fund does not amount to an "inherent right" to its classification as marital property under Stone, which held that a due process protest "is but a statutory privilege, and partakes in its nature of none of the essentials of an inherent right." Stone, supra at 781.

The consideration of Husband's equal protection claim must first be whether the challenged statutory classification operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution. In Re Marriage of Kohring, 999 S.W.2d 228 (Mo.banc 1999). For purposes of equal

protection, fundamental rights include such things as rights to free speech, to vote, to interstate travel and other basic liberties. Cas. Reciprocal v. Mo. Emp. Mut. Ins., 956 S.W.2d 249 (Mo.banc 1997).

Suspect classes for purposes of an equal protection challenge include those classes based on race, national origin or illegitimacy that because of historical reasons command extraordinary protection from the majoritarian political process. Id., at 256, citing Mahoney v. Doerhoff Surgical Servs., Inc., 807 S.W.2d 503,512 (Mo.banc 1991). If the statute does not operate to such disadvantage, this court has held that equal protection review is limited to a determination of whether the classification is *rationally related to a legitimate state interest*. Kohring, *supra*, at 232. As Husband has no fundamental or inherent property right in the separate property of Wife for due process analysis under Stone, and is not in a suspect class for purposes of equal protection, the standard for reviewing the constitutionality of §169.572 R.S.Mo., is that of one rationally related to a legitimate state interest. Id.

**PRESUMPTION OF VALIDITY.** Husband contends that §169.572 R.S.Mo as applied to the facts of this case does not enjoy a presumption of validity. (App.Br. 18). This contention is accurate “when the purpose of the legislation is to create classes upon criteria that are inherently suspect or impinges upon a fundamental right.” Mahoney v. Doerhoff Surgical Services, 807 S.W.2d 503, 512 (Mo.banc 1991). Husband correctly states that this court has interpreted one legislative purpose of §169.572 R.S.Mo in granting a protected, non-divisible retirement fund for Missouri public school teachers



the same as that protection extended to Social Security for teachers who do not contribute to the Social Security retirement fund. Silcox v. Silcox, 6 S.W.3d 899 (Mo.banc 1999). No other legislative purpose of the statute was expressed in Silcox, however, this court may, in the absence of express legislative intent, look to the construction of similar statutes in other jurisdictions. The Supreme Court of Kentucky heard equal protection arguments regarding a similar statute and its constitutionality under KRS 161.700(2). Waggoner v. Waggoner, 846 S.W. 2d 704 (1992). While holding that the primary purpose of the statute was to provide retirement funds for teachers not covered by social security, the court also held that the challenged statute serve as an incentive to attract and retain teachers as other retirement systems have been found to do. Id. at 707.

In enacting the Missouri statute, “a rational legislature could have based its decision...on a number of considerations” to classify teacher’s retirement pensions as separate property for legitimate reasons beyond providing for those not otherwise covered by social security including encouraging enrollment of teachers or to compensate them for a low-end salary throughout their career. Batek v. Curators of University of Missouri, 920 S.W.2d 895, 899 (Mo.banc 1996). “It is not in the Court’s province to question the wisdom, social desirability or economic policy underlying a statute as these are matters for the legislature’s determination.” Id. Moreover, this court has also held that “every presumption must be indulged in favor of the constitutionality of the law. While validity of a statute cannot stand upon legislative declaration alone, yet the rule is that the legislative declaration of purpose and policy is entitled to gravest consideration” State ex rel. Toedebusch v. Public Service, 520 S.W.2d 38, (note 34, Mo.banc 1975).

**DUE PROCESS ANALYSIS.** As noted, Husband claims a “fundamental” property right in Wife’s separate property claiming a “complete denial to the Husband of any opportunity to acquire, enjoy and dispose of property that absolutely prevents the courts from awarding him an interest in certain property...”(Cr.App.Br. 20). This contention is made in spite of §169.572 R.S.Mo., which expressly classifies the teacher’s retirement fund as Wife’s separate property. The trial court in this case was not “absolutely prevented” from awarding an interest in that, in its distribution of the “marital property,” Husband received a substantially higher percentage than did Wife based on the value of Wife’s retirement fund. The court’s consideration led to Husband’s greater share in spite of his misconduct toward Wife during the marriage and the concealment of his assets during dissolution which are set out in Appellant’s Brief on the distribution of property issue. (Cr.App.Br.13,14.)(LF 110). Moreover, Husband offers no facts to justify the “personal and financial sacrifices” made by him on Wife’s behalf. Indeed, the record indicates that he actually withheld funds from the marital community that Wife was entitled to enjoy. (TR 183). The facts of this case do not entitle him to a greater “reward” for his conduct during the marriage and frequent periods of unemployment over and above the court’s division of marital property that was substantially in his favor. (Cr.App.Br. 24); (Tr. 42).

**EQUAL PROTECTION ANALYSIS.** Husband also claims an equal protection violation in that no other person in his position who is involved in a dissolution proceeding in Missouri receives such unfavorable treatment. (Cr.App.Br. 23). As noted above, under the rational basis test of equal protection analysis, a statute will be sustained

if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose. U.S.C.A. Const. Amend. 14, State v. Taylor, 726 S.W.2d 130(Mo.banc 1987). Moreover, under equal protection, disparate treatment of similar classes is permissible, where no fundamental right or suspect class is involved. Simpson v. Kilcher, 749 S.W.2d 386 (Mo.banc 1988). Husband argues that the statute creates arbitrary classifications that are “irrelevant to the statute’s purpose” (Cr.App.Br. 24). Husband assumes that the objective of providing retirement to teachers not covered by social security is the only objective or purpose of the statute when a rational legislature could have based its decision on any number of other considerations. Batek, *supra*, at 899.

## **CONCLUSION**

The trial Court did not err in treating Wife's teachers retirement fund as her separate property because §169.572 R.S.Mo. protects the retirement fund from division in a dissolution proceeding in that, even though Wife contributed to the social security fund in addition to her teacher's pension, the statute is presumed valid and Husband does not possess a fundamental property right in Wife's separate property, nor is he a member of a suspect class for the purposes of due process or equal protection consideration under the U.S. and Missouri Constitutions. It is not in the Court's province to question the wisdom, social desirability or economic policy underlying a statute as these are matters for the legislature's determination.

Respectfully submitted,

---

Michael J. Svetlic # 25279  
Svetlic & Wemhoff, L.C.  
5716 N. Broadway  
Kansas City, Missouri 64118  
(816)452-4533  
(816)452-8371 Fax  
Attorney for Respondent/  
Cross-Appellant

**CERTIFICATE OF COMPLIANCE AND SERVICE PURSUANT TO RULE 84.06**

The undersigned hereby certifies that Respondent's in Case No. SC 841341 was signed and prepared pursuant to Rule 55.03(a) and (b); that the brief complies with the limitations contained in Rule 84.06(b); that there are 2,222 words contained in Respondent's Brief excluding the cover, this certification and signature block as counted by the word processing system used to prepare Respondent's Brief ; that a disk is included herewith in Microsoft Word for Windows format and the disk has been scanned for viruses and that it is virus free and one copy of Respondent's Brief and one copy of disk were mailed via U.S. Mail, postage prepaid, this 8<sup>th</sup> day of August to James D. Boggs 6406 N.W. Cosby, Kansas City, Missouri 64151, Attorney for Appellant.

---

MICHAEL J. SVETLIC